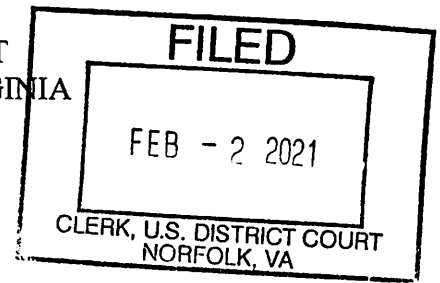


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



CALVIN WAYNE CUNNINGHAM, #1056160

Petitioner,

v.

CIVIL ACTION NO. 2:19cv643

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

**FINAL ORDER**

Before the Court is a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2254, ECF No. 1, and the Respondent's Motion to Dismiss. ECF No. 13. In his Petition, the *pro se* Petitioner alleges violation of federal rights pertaining to his convictions in the Chesapeake Circuit Court for Larceny, False ID, Attempt to Flee and Obstruction of Justice. As a result of the convictions, Petitioner was sentenced to serve a total of five (5) years and 18 months in prison with four (4) years and 6 months suspended.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed December 30, 2020, recommends dismissal of the Petition with prejudice.<sup>1</sup> ECF No. 18. On January 19, 2021, Respondent timely filed objections to the Report and Recommendation. Petitioner has not responded to

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<sup>1</sup> The Report and Recommendation, ECF No. 18, recommends the Petition be Denied and Dismissed Without Prejudice in the introductory paragraph, *Id.* at 1, but recommends the Petition be Denied and Dismissed With Prejudice under the Recommendations and Conclusions section, *Id.* at 11.

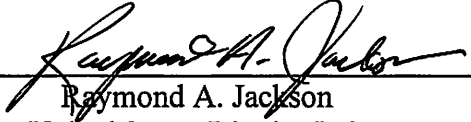
Respondent's objections and the time to do so has expired.

The Court, having reviewed the record and examined the objections filed by Respondent finds the report's introductory paragraph recommending that the petition be dismissed without prejudice to be a Scrivener's error. Therefore, having made *de novo* findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations as set forth in the Recommendations & Conclusions, *Id.* at 11, that the Respondent's Motion to Dismiss, ECF No. 13, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent.

Finding that the procedural basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Order to Petitioner and to counsel of record for the Respondent. It is so **ORDERED**.

  
Raymond A. Jackson  
United States District Judge

Norfolk, Virginia  
February 1, 2021